

ESTTA Tracking number: **ESTTA801992**

Filing date: **02/16/2017**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Vicuron Holdings LLC
Granted to Date of previous extension	03/01/2017
Address	235 East 42nd Street New York, NY 10017 UNITED STATES

Attorney information	Paul C Llewellyn Arnold & Porter Kaye Scholer LLP 250 West 55th Street New York, NY 10019-9710 UNITED STATES paul.llewellyn@apks.com, kyle.gooch@apks.com, tmdocketing@apks.com, john.rynkiewicz@apks.com Phone:2128367828
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### Applicant Information

Application No	87064223	Publication date	11/01/2016
Opposition Filing Date	02/16/2017	Opposition Period Ends	03/01/2017
Applicant	The Health Era, Corp. 237 North Miami Beach, FL 33162 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: EXTRACT OF EURYCOMA LONGLIFOLIA JACK
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### Applicant Information

Application No	87064204	Publication date	11/01/2016
Opposition Filing Date	02/16/2017	Opposition Period Ends	
Applicant	The Health Era, Corp. 237 North Miami Beach, FL 33162 UNITED STATES		

### Goods/Services Affected by Opposition


Class 005. First Use: 0 First Use In Commerce: 0
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All goods and services in the class are opposed, namely: Dietary supplements
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## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)

## Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3277483	Application Date	10/11/2005
Registration Date	08/07/2007	Foreign Priority Date	NONE
Word Mark	ERAXIS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2006/05/15 First Use In Commerce: 2006/05/15 Pharmaceutical preparations for the treatment of fungal infections		

Attachments	78730930#TMSN.png( bytes ) Vicuron - EREXSI - Consolidated Notice of Opposition.pdf(43699 bytes )
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Signature	/paul c. llewellyn/
Name	Paul C Llewellyn
Date	02/16/2017

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

VICURON HOLDINGS LLC and PFIZER  
INC.,

Opposers,

v.

THE HEALTH ERA, CORP.,

Applicant.

Opposition No. \_\_\_\_\_

**CONSOLIDATED NOTICE OF OPPOSITION**

Serial No.: 87064223  
Filed: June 8, 2016  
Published: November 1, 2016  
Mark: EREXSI

Serial No.: 87064204  
Filed: June 8, 2016  
Published: November 1, 2016  
Mark: EREXSI

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Opposers Vicuron Holdings LLC (“Vicuron”), a Delaware limited liability company with a place of business at 235 East 42nd Street, New York, New York, and Pfizer Inc. (“Pfizer”), a Delaware corporation with a place of business at 235 East 42nd Street, New York, New York, believe that they will be damaged by the applications to register the mark EREXSI shown in Application Serial Nos. 87064223 and 87064204 filed by applicant The Health Era, Corp. (“Applicant”), and therefore oppose the same.

As grounds for their opposition, Vicuron and Pfizer (together, “Opposers”) allege as follows:

1. Pfizer is a research-based biomedical and pharmaceutical company in the business of discovering, developing, manufacturing, and delivering medicines. Vicuron is a subsidiary of Pfizer.

2. Opposers and their predecessors in interest have used the mark ERAXIS in United States commerce continuously since at least May 2006 in connection with the marketing and sale of anidulafungin, a pharmaceutical preparation indicated for the treatment of certain fungal infections.

3. Vicuron is the owner of U.S. Trademark Registration No. 3277483 for the trademark ERAXIS covering “pharmaceutical preparations for the treatment of fungal infections” in International Class 5 (the “ERAXIS Registration”).

4. The ERAXIS Registration is a valid and subsisting registration on the Principal Register. A title and status copy of the ERAXIS Registration, obtained from the United States Patent and Trademark Office’s Trademark Status and Document Retrieval database, is attached as **Exhibit A** to this notice.

5. The ERAXIS mark is an inherently distinctive mark; it is a fanciful and coined term with no meaning other than to identify Opposers’ products.

6. By virtue of Opposers’ substantial use, sales, advertising, and promotion of pharmaceutical preparations for the treatment of fungal infections throughout the United States in connection with the ERAXIS mark, as well as the inherently distinctive nature of the mark, the ERAXIS mark has become a well-known mark and has become distinctive of Opposers’ products.

7. Despite Opposers' long prior common law and statutory rights in the ERAXIS mark, and long after Opposers established rights in and to the ERAXIS mark, Applicant filed two intent-to-use applications for the mark EREXSI: (i) U.S. Application Serial No. 87064223, covering "extract of eurycoma longifolia jack" in International Class 5; and (ii) U.S. Application Serial No. 87064204, covering "dietary supplements" in International Class 5 (together, the "Subject Applications").

8. Applicant filed the Subject Applications with at least constructive notice of Vicuron's ERAXIS Registration.

9. The Subject Applications were published for opposition on November 1, 2016. Opposers filed for extensions of time to oppose on November 23, 2016. The Trademark Trial and Appeal Board has granted Opposers an extension until March 1, 2017 to oppose the Subject Applications.

10. Opposers' ERAXIS mark has priority over Applicant's EREXSI mark. The ERAXIS Registration was filed on October 11, 2005, on an intent-to-use basis. On January 30, 2007, Opposers' predecessor in interest filed a statement of use pursuant to 15 U.S.C. § 1051(d), indicating that the mark was first used in United States commerce on May 15, 2006. The Subject Applications were filed on June 8, 2016, on an intent-to-use basis.

11. Applicant's EREXSI mark is substantially or highly similar to the Opposers' ERAXIS mark in sound, appearance, and commercial impression. Indeed, the marks differ only in a single vowel ("A" versus "E") and the transposition of the last two letters ("IS" versus "SI").

12. The goods set forth in the Subject Applications are closely related to the goods for which Opposers' ERAXIS mark is registered and used. For example, many dietary supplements and extracts purport to have antifungal effects. In addition, a company that sells the products

covered by the Subject Applications could be expected by many consumers to also sell antifungal products.

13. As a result of the highly similar nature of the marks, the strength of Opposers' ERAXIS mark, and the similarity and relatedness of the parties' respective goods, many who encounter products sold under Applicant's EREXSI mark are likely to think that the same company that offers Applicant's product might be authorized by, sponsored by, licensed by, affiliated with, or related to the company that offers Opposers' products.

14. Based on the foregoing, Applicant's EREXSI mark, if used in conjunction with the goods set forth in the Subject Applications, is likely to cause confusion, mistake, or to deceive as to the origin, source, sponsorship, or affiliation of Applicant's goods.

15. Applicant's EREXSI mark so resembles Opposer's previously used and registered ERAXIS mark as to be likely, when applied to the goods set forth in the Subject Applications, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

16. Opposers previously have used the trademark ERAXIS throughout the United States in connection with antifungal preparations, such that ERAXIS has become a name or identity of substantial reputation that is closely identified with Opposers. Accordingly, Applicant's applied-for mark EREXSI is likely, when applied to the goods set forth in the Subject Applications, to point uniquely to Opposers and to falsely suggest a connection with Opposers within the meaning of 15 U.S.C. § 1052(a).

**WHEREFORE**, Opposers respectfully pray that this opposition be sustained and that registration to Applicant of the marks set forth in the Subject Applications be refused.

The United States Patent and Trademark Office and Trademark Trial and Appeal Board are authorized to collect any fees necessitated by this Consolidated Notice of Opposition from

the deposit account of Opposers' attorneys, Arnold & Porter Kaye Scholer LLP, Deposit  
Account No. 11-0228.

Dated: February 16, 2017  
New York, New York

Respectfully submitted,

**ARNOLD & PORTER  
KAYE SCHOLER LLP**



By: \_\_\_\_\_

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*Attorneys for Opposers Vicuron  
Holdings LLC and Pfizer Inc.*

# EXHIBIT A



**Generated on:** This page was generated by TSDR on 2017-02-16 16:30:05 EST

**Mark:** ERAXIS

ERAXIS

**US Serial Number:** 78730930

**Application Filing Date:** Oct. 11, 2005

**US Registration Number:** 3277483

**Registration Date:** Aug. 07, 2007

**Filed as TEAS Plus:** Yes

**Currently TEAS Plus:** Yes

**Register:** Principal

**Mark Type:** Trademark

**Status:** A Section 8 declaration has been accepted.

**Status Date:** Jul. 23, 2013

**Publication Date:** Jun. 13, 2006

**Notice of Allowance Date:** Dec. 19, 2006

## Mark Information

**Mark Literal Elements:** ERAXIS

**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

## Goods and Services

**Note:** The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*...\* identify additional (new) wording in the goods/services.

**For:** Pharmaceutical preparations for the treatment of fungal infections

**International Class(es):** 005 - Primary Class

**U.S Class(es):** 006, 018, 044, 046, 051, 052

**Class Status:** ACTIVE

**Basis:** 1(a)

**First Use:** May 15, 2006

**Use in Commerce:** May 15, 2006

## Basis Information (Case Level)

**Filed Use:** No

**Currently Use:** Yes

**Amended Use:** No

**Filed ITU:** Yes

**Currently ITU:** No

**Amended ITU:** No

**Filed 44D:** No

**Currently 44D:** No

**Amended 44D:** No

**Filed 44E:** No

**Currently 44E:** No

**Amended 44E:** No

**Filed 66A:** No

**Currently 66A:** No

**Filed No Basis:** No

**Currently No Basis:** No

## Current Owner(s) Information

**Owner Name:** VICURON HOLDINGS LLC

**Owner Address:** 235 EAST 42ND STREET  
NEW YORK, NEW YORK 100175755  
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country DELAWARE  
Where Organized:

## Attorney/Correspondence Information

### Attorney of Record

Attorney Name: Seana Smith

Attorney Primary Email Address: [deadlinesipnyo@pfizer.com](mailto:deadlinesipnyo@pfizer.com)

Attorney Email Authorized: Yes

### Correspondent

Correspondent Name/Address: Seana Smith  
PFIZER INC.  
9th floor  
235 East 42nd Street  
NEW YORK, NEW YORK 10017  
UNITED STATES

Phone: 212 733 1112

Fax: 212 573-2273

Correspondent e-mail: [deadlinesipnyo@pfizer.com](mailto:deadlinesipnyo@pfizer.com)

Correspondent e-mail Authorized: Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Aug. 07, 2016	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Jul. 23, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 - E-MAILED	
Jul. 23, 2013	REGISTERED - SEC. 8 (6-YR) ACCEPTED	75461
Jul. 23, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	75461
Jul. 08, 2013	TEAS SECTION 8 RECEIVED	
Mar. 03, 2010	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Aug. 06, 2007	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Aug. 07, 2007	REGISTERED-PRINCIPAL REGISTER	
May 21, 2007	LAW OFFICE REGISTRATION REVIEW COMPLETED	76537
May 21, 2007	ASSIGNED TO LIE	76537
May 04, 2007	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Apr. 28, 2007	STATEMENT OF USE PROCESSING COMPLETE	76569
Jan. 30, 2007	USE AMENDMENT FILED	76569
Jan. 30, 2007	TEAS STATEMENT OF USE RECEIVED	
Jan. 08, 2007	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jan. 08, 2007	ATTORNEY REVOKED AND/OR APPOINTED	
Jan. 08, 2007	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Dec. 19, 2006	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Oct. 27, 2006	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Aug. 07, 2006	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 11, 2006	EXTENSION OF TIME TO OPPOSE RECEIVED	
Jun. 13, 2006	PUBLISHED FOR OPPOSITION	
May 24, 2006	NOTICE OF PUBLICATION	
May 01, 2006	LAW OFFICE PUBLICATION REVIEW COMPLETED	67215
Apr. 21, 2006	ASSIGNED TO LIE	67215
Apr. 14, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 14, 2006	ASSIGNED TO EXAMINER	67443
Oct. 14, 2005	NEW APPLICATION ENTERED IN TRAM	

## Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

## TM Staff and Location Information

### TM Staff Information - None

#### File Location

**Current Location:** TMEG LAW OFFICE 105

**Date in Location:** Jul. 23, 2013

## Assignment Abstract Of Title Information

### Summary

**Total Assignments:** 1

**Registrant:** Vicuron Pharmaceuticals Inc.

### Assignment 1 of 1

**Conveyance:** ASSIGNS THE ENTIRE INTEREST

**Reel/Frame:** [4158/0076](#)

**Pages:** 23

**Date Recorded:** Mar. 01, 2010

**Supporting Documents:** [assignment-tm-4158-0076.pdf](#)

### Assignor

**Name:** [VICURON PHARMACEUTICALS INC.](#)

**Execution Date:** Nov. 30, 2009

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:** DELAWARE

### Assignee

**Name:** [VICURON HOLDINGS LLC](#)

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** DELAWARE

**Address:** 235 EAST 42ND STREET  
NEW YORK, NEW YORK 10017-5755

### Correspondent

**Correspondent Name:** MATTHEW A. PATER

**Correspondent Address:** 150 EAST 42ND STREET  
NEW YORK, NY 10017

### Domestic Representative - Not Found

## Proceedings

### Summary

**Number of Proceedings:** 1

### Type of Proceeding: Extension of Time

**Proceeding Number:** [78730930](#)

**Filing Date:** Jul 11, 2006

**Status:** Terminated

**Status Date:** Oct 27, 2006

**Interlocutory Attorney:**

### Defendant

**Name:** Vicuron Pharmaceuticals Inc.

**Correspondent Address:** ROMY CORLISS  
PFIZER INC.  
MOPS TRADEMARK DEPT. 201 TABOR ROAD  
MORRIS PLAINS NJ , 07950  
UNITED STATES

### Associated marks

Mark	Application Status	Serial Number	Registration Number
ERAXIS	Section 8 - Accepted	<a href="#">78730930</a>	<a href="#">3277483</a>

### Potential Opposer(s)

**Name:** Glaxo Group Limited

**Correspondent** Teresa H. Anzalone  
**Address:** GlaxoSmithKline  
709 Swedeland RoadUW2221  
King of Prussia PA , 19406  
UNITED STATES

**Correspondent e-mail:** [trademarks@gsk.com](mailto:trademarks@gsk.com)

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Jul 11, 2006	
2	EXTENSION OF TIME GRANTED	Jul 11, 2006	